

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTATE OF VERL A BRANTNER,

Plaintiff,

v.

OCWEN LOAN SERVICING, LLC, a
Delaware limited liability company; and
QBE INSURANCE CORPORATION, a
Pennsylvania corporation,

Defendants.

No. 2:17-cv-00582-TSZ

AGREED PRETRIAL ORDER

JURISDICTION

Jurisdiction and venue in this lawsuit are conferred on the United States District Court for the Western District of Washington with regard to plaintiff's federal claims by virtue of 12 U.S.C. § 2614. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

CLAIMS AND DEFENSES

Plaintiff intends to pursue the following claims against defendant, OCWEN LOAN SERVICING LLC ("Ocwen"), at time of trial:

1. Violation of the federal Real Estate Settlement Practices Act, 12 U.S.C. §2605(k)(1)(C) ("RESPA").

2. Violation of the Washington Consumer Loan Act, RCW 31.04.290(1)(c) and WAC 208-620-900(1)(c) (“CLA”).

3. Violation of the Washington Consumer Protection Act, RCW 19.86.020 (“CPA”).

ADMITTED FACTS

1. In October 2011 Verl Brantner purchased a single family residence located in Arlington, Washington (the “Arlington residence”) with a loan in the sum of \$161,600.00 (hereinafter the “Loan”).

2. The Loan was secured by a promissory note and deed of trust which were executed in October 2011.

3. Ocwen acquired the Loan servicing rights on February 16, 2013.

4. Verl Brantner died in November 2013.

5. No Loan payments have been made since November 2013.

6. The Loan became in default in January 2014.

7. In December 2013 Ocwen procured force-placed insurance from QBE Insurance Corporation (“QBE”) covering the Arlington residence against risk of fire (hereinafter the “Policy”).

8. The force-placed insurance policy from QBE was effective from December 5, 2013 to December 5, 2014.

9. Plaintiff was designated as the Additional Named Insured on the Policy.

10. The Policy had a dwelling limit of \$156,033.00.

11. On March 23, 2014, the Property was damaged by a fire.

12. At the time of the Fire, the outstanding balance of the Loan exceeded the dwelling limit of the QBE Policy.

13. Around February 2015, James Jameson received a reinstatement quote regarding the Loan.

14. In February 2015, Irene Brantner received letters of administration making her the personal representative of the Estate.

15. On March 11, 2015, Mr. Jameson contacted QBE to inform it of the fire.

16. On or about June 19, 2015, Ocwen sent a Loan payoff quote to James Jameson.

17. On or about June 24, 2015, Ocwen sent a Loan payoff quote to James Jameson.

18. James Jameson received the Loan payoff quote dated June 24, 2015.

19. Ocwen was not the insurer of the QBE Policy.

20. After valuing the fire loss at \$132,348.33, QBE sent to Ocwen a check in the amount of \$132,348.33.

21. On or about September 25, 2015, Ocwen received the \$132,348.33 insurance proceeds from QBE.

22. Ocwen advised Plaintiff of receipt of the \$132,348.33 from QBE on or about October 14, 2015.

23. On or about December 21, 2015, Ocwen sent a partial payoff affidavit to the Estate.

24. The partial payoff affidavit was signed by Irene Brantner and notarized by Mr. Jameson.

25. The partial payoff affidavit stated, in pertinent part, that "the additional funds in the amount of \$29,251.67 must be submitted to [Ocwen's] Insurance Loss Department along with this completed affidavit in order to pay off and satisfy the loan."

26. As of August 16, 2018, \$80,626.40 remains due and owing on the Loan, and that figure continues to increase as interest and other charges accrue.

ISSUES OF LAW

1. For purposes of 12 U.S.C. §2605(k)(1)(C), is the attorney for the Estate of Brantner an authorized representative and therefore a “borrower”?

2. Is there any federal or state privacy law that justified Ocwen in requiring the Estate’s attorney to demonstrate proof of authority before responding to the Estate’s attorney’s written requests for information on June 16, 2014 and February 19, 2015?

3. For purposes of RCW 31.04.015(4), is the attorney for the Estate of Brantner an authorized representative and therefore a “borrower”?

4. Does the Estate of Brantner possess standing to enforce the provisions of WAC 208-620-900(1)(a) and (c)?

5. Were Mr. Jameson’s June 16, 2014 and February 19, 2015 letters “Qualified Written Requests” under 12 U.S.C. § 2605(e)(1)(B)?

6. Did Ocwen fail to take timely action to respond to a borrower’s requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer’s duties, as required under 12 U.S.C § 2605(k)(1)(C)?

7. Did Ocwen fail to collect and make tax or insurance payments from the loan’s escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower, as required under RCW 31.04.290(1)(c)?

8. Did Ocwen commit an unfair or deceptive act or practice, occurring in trade or commerce, likely to affect the public interest, and causing injury to a person’s business or property, in violation of the Washington Consumer Protection Act?

EXPERT WITNESSES

1. On behalf of plaintiff:

a. **David Forte.** Mr. Forte will testify consistent with his expert disclosure report dated February 19, 2018, his declaration dated April 12, 2018 (ECF No. 23) filed in this lawsuit, as well as the subjects and specifics contained in the exhibits identified

below. Ocwen objects to Mr. Forte's purported qualifications as an expert witness.

OTHER WITNESSES

a. On behalf of the plaintiff:

1. **Irene Brantner.** Ms. Brantner will testify with respect to her son Verl's purchase of the Arlington residence, payments made on the Loan since its inception, her son's death, her status as an heir to her son's estate, her interaction with defendant Ocwen from the time of her son's death until the present, as well as the subjects and specifics contained in the exhibits identified below.

2. **James Jameson.** Mr. Jameson will testify consistent with the subjects and specifics contained in his declaration dated July 5, 2018 (ECF No. 40) filed in this lawsuit, as well as the subjects and specifics contained in the exhibits identified below.

3. **Kevin Flannigan.** Mr. Flannigan will testify via deposition taken on July 24, 2018. Ocwen objects to the use of this corporate officer's deposition testimony unless offered solely for purposes of rebuttal.

b. On behalf of the defendant:

1. Ocwen intends to call a designated corporate representative, Kevin Flannigan, with knowledge regarding business records maintained by Ocwen, including chronological notes, transaction histories, and loan documents related to Verl A. Brantner's mortgage loan, the subject insurance claim, and other issues identified in Plaintiff's Amended Complaint. The address for said representative is care of the undersigned counsel at Perkins Coie LLP.

2. Ocwen also intends to call Michelle Faria, a designated corporate representative of QBE Insurance Corporation, who has knowledge of business records maintained by QBE, including notes, policy documents, and claim documents related to QBE's hazard insurance coverage and valuation of the subject property. The address for said representative is care of Jensen Morse Baker PLLC, 506 2nd Ave.,

Seattle, WA 98104.

3. Ocwen also hereby cross-endorses Irene Brantner and James Jameson as witnesses in this matter subject to recall for Ocwen's case-in-chief.

EXHIBITS

| EXHIBIT | DESCRIPTION | DEPOSITION EXHIBIT NUMBER(S); DOCUMENT BATES NUMBER | ADMINISSIBILITY STIPULATED | AUTHENTICITY STIPULATED, ADMINISSIBILITY DISPUTED | AUTHENTICITY AND ADMINISSIBILITY DISPUTED |
|---------|--|--|-------------------------------|--|---|
| 1. | 11.10.21 Statutory Warranty Deed | Ocwen 1301 | x | | |
| 2. | 11.10.21 Note | Ocwen 00001-0002 | x | | |
| 3. | 11.10.21 Deed of Trust | Ocwen 0003-0011 | x | | |
| 4. | 13.12.06 Irene Brantner Handwritten Notes | | | | x |
| 5. | 13.12.10 Notice of Placement/Renewal Notification Certificate | Ocwen 0834-0855 | | | |
| 6. | 14.03.23 Field Incident Report – Snohomish County Fire District #21 | | | x | |
| 7. | 14.03.23 Snohomish County Fire Marshal's Office Photographs | | | x | |
| 8. | 14.03.24 Fire Damage Photographs | QBE 000705 | | x | |
| 9. | 14.04.18 Mortgage Account Statement | Ocwen 0912-0913 | x | | |
| 10. | 14.04.26 Fire Damage Photographs | QBE 000706-708 | | x | |
| 11. | 14.04.29 Ocwen Notice of Title Search | Ocwen 0222 | | x | |
| 12. | 14.05.15 Ocwen Notice of Property Inspection | Ocwen 0223 | | x | |
| 13. | 14.05.19 Mortgage Account Statement | Ocwen 0914-0915 | x | | |
| 14. | 14.06.04 Ocwen Notice of Trip Charges | Ocwen 0226 | | x | |
| 15. | 14.06.10 Ocwen Notice of Property Inspection | Ocwen 0228 | | x | |
| 16. | 14.06.16 James Jameson LT Ocwen Loan Servicing | Ocwen 0254 | | | x |
| 17. | 14.06.18 Mortgage Account Statement | Ocwen 0916-0917 | x | | |
| 18. | 14.06.26 Ocwen Loan Servicing LT Estate of Brantner | Ocwen 0121 | x | | |
| 19. | 14.07.01 Ocwen Loan Servicing LT James Jameson | Ocwen 0250 | x | | |

| EXHIBIT | DESCRIPTION | DEPOSITION EXHIBIT NUMBER(S); DOCUMENT BATES NUMBER | ADMINISSIBILITY STIPULATED | AUTHENTICITY STIPULATED, ADMINISSIBILITY DISPUTED | AUTHENTICITY AND ADMINISSIBILITY DISPUTED |
|---------|---|--|-------------------------------|--|---|
| 20. | 14.07.01 Ocwen Loan Servicing LT Estate of Verl Brantner | Ocwen 0242-243 | x | | |
| 21. | 14.07.10 Third Party Authorization and Agreement to Release | Ocwen 1161 | x | | |
| 22. | 14.07.14 Ocwen Notice of Property Inspection | Ocwen 0235 | | x | |
| 23. | 14.07.15 Ocwen Loan Servicing LT Estate of Verl Brantner | Ocwen 0244-0245 | x | | |
| 24. | 14.10.07 Detail Transaction History | Ocwen 1303-1541 | | x | |
| 25. | 15.02.19 James Jameson LT Ocwen Loan Servicing | Ocwen 0757-0762 | x | | |
| 26. | 15.02.24 Ocwen Loan Servicing LT Estate of Verl Brantner | Ocwen 0331-0332 | x | | |
| 27. | 15.02.26 Reinstatement Quote | Ocwen 0339-0340 | x | | |
| 28. | 15.03.04 James Jameson Telephone Log | | | | x |
| 29. | 15.03.16 CoreLogic Field Services Summary | QBE 000528 | | | x |
| 30. | 15.03.16 QBE Insurance Corporation LT Verl Brantner | | x | | |
| 31. | 15.04.10 James Jameson LT Ocwen Loan Servicing | | x | | |
| 32. | 15.05.22 Ocwen Loan Servicing LT Estate of Brantner | | x | | |
| 33. | 15.10.01 Snohomish County Warning Notice | | | x | |
| 34. | 15.10.14 Invoice – Munn Construction, Inc. | | | | x |
| 35. | 15.10.14 Proposal – Graffstra Backhoe, Inc. | | | | x |
| 36. | 15.10.14 Loan Payment Received Notification | | | x | |
| 37. | 15.11.25 Ocwen Loan Servicing LT Estate of Brantner | | x | | |
| 38. | 15.12.20 Payoff Quote | Ocwen 0549-0553 | x | | |
| 39. | 15.12.21 Mortgagor – Partial Payoff Affidavit | | x | | |
| 40. | 16.01.14 Payoff Quote | | x | | |

| EXHIBIT | DESCRIPTION | DEPOSITION EXHIBIT NUMBER(S); DOCUMENT BATES NUMBER | ADMINISSIBILITY STIPULATED | AUTHENTICITY STIPULATED, ADMINISSIBILITY DISPUTED | AUTHENTICITY AND ADMINISSIBILITY DISPUTED |
|---------|--|--|-------------------------------|--|---|
| 41. | 16.01.21 Executed Mortgagor – Partial Payoff Affidavit | | x | | |
| 42. | 16.01.26 Payoff Quote | | x | | |
| 43. | 16.01.29 Notice of Violation | | | x | |
| 44. | 16.02.19 Mike Watkins LT Ocwen Loan Servicing | Ocwen 1174-1175 | x | | |
| 45. | 16.03.11 Payoff Quote | | x | | |
| 46. | 16.03.13 Mortgagor – Partial Payoff Affidavit | | x | | |
| 47. | 16.03.25 Payoff Quote | | x | | |
| 48. | 16.03.31 Payoff Quote | | x | | |
| 49. | 16.04.18 Notice of Default | | | x | |
| 50. | 16.04.21 Payoff Quote | | x | | |
| 51. | 16.04.28 Payoff Quote | | x | | |
| 52. | 16.07.14 Notice To Occupant Of Pending Acquisition | | | x | |
| 53. | 16.08.09 Payoff Quote | | x | | |
| 54. | 16.08.15 Mortgage Account Statement | | x | | |
| 55. | 16.08.18 E-mail Chain: James Jameson – Robert McDonald | | | x | |
| 56. | 16.08.19 Payoff Quote | | x | | |
| 57. | 16.09.30 Payoff Quote | | x | | |
| 58. | 17.01.10 William E. Pierson, Jr. LT Ocwen Loan Servicing | Ocwen1177 | | x | |
| 59. | 17.02.17 Ocwen Loan Servicing LT William E. Pierson, Jr. | Ocwen0690 | | x | |
| 60. | 17.03.09 Ocwen Loan Servicing LT William E. Pierson, Jr. | Ocwen 0803-0804 | | x | |
| 61. | Altisource Process Overview Insurance Loss Drafts | Ocwen1649-1827 | | x | |
| 62. | Altisource Loss Drafts Procedures | Ocwen1828-2059 | | x | |
| 63. | 13.12.10 Notice of Placement Renewal Notification Certificate | Ocwen0144-0165 | x | | |

| Def. Ex. # | Description | Date | Bates No. (OCWEN-) | No Objection | Authenticity Admitted but Objectable | Objections |
|------------|--------------------------------------|---------------------|-----------------------|--------------|--|------------|
| 200 | Insurance Renewal Notice | 10/21/13 | 127 | x | | |
| 201 | Correspondence from Ocwen | 12/6/13 | 140- 141 | x | | |
| 202 | Notice of Pre-Foreclosure Options | 1/14/14 | 175- 190 | | x | |
| 203 | Correspondence from Ocwen | 1/29/14 | 199 | | x | |
| 204 | Delinquency notice | 4/18/14 | 220- 221 | | x | |
| 205 | Delinquency notice | 5/19/14 | 224- 225 | | x | |
| 206 | Delinquency notice | 6/18/14 | 240- 241 | | x | |
| 207 | Correspondence from Ocwen | 7/1/14 | 251- 254 | | | |
| 208 | Delinquency notice | 7/18/14 | 246- 247 | | x | |
| 209 | Delinquency notice | 8/18/14 | 255- 256 | | x | |
| 210 | Notice of Pre-Foreclosure Options | 9/15/14 | 257- 290 | | x | |
| 211 | Delinquency notice | 10/18/14 | 304- 305 | | x | |
| 212 | Delinquency notice | 11/18/14 | 309- 310 | | x | |
| 213 | Delinquency notice | 12/19/14 | 319- 320 | | x | |
| 214 | Delinquency notice | 1/27/15 | 325- 326 | | x | |
| 215 | Delinquency notice | 2/24/15 | 331- 332 | | x | |
| 216 | Correspondence from Ocwen | 2/27/15 | 342- 343 | x | | |
| 217 | Notice of Pre-Foreclosure Options | 4/3/15 | 351- 383 | | x | |
| 218 | Payoff quote | 6/25/15 | 398- 401 | | | |
| 219 | Payoff quote | 8/3/15 | 412- 415 | | | |
| 220 | QBE valuation | 9/10/15 | 1272- 1298 | x | | |
| 221 | Account Statements | 7/18/14- 9/16/15 | 918- 971 | x | | |
| 222 | Payoff quote | 9/28/15 | 428- 431 | | x | |
| 223 | Correspondence from Ocwen | 10/13/15 | 461- 467 | x | | |

| Def. Ex. # | Description | Date | Bates No. (OCWEN-) | No Objection | Authenticity Admitted but Objectionable | Objections |
|------------|---------------------------|----------|--------------------|--------------|---|------------|
| 224 | Correspondence from Ocwen | 10/27/15 | 472-477 | x | | |
| 225 | Account Statement | 7/18/16 | 1006-1009 | x | | |
| 226 | Account Statement | 8/15/16 | 1010-1013 | x | | |

ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on October 29, 2018 at 9:00 a.m.

(b) Trial briefs shall be submitted to the Court on or before October 12, 2018.

(c) Jury instructions requested by either party shall be submitted to the Court on or before October 12, 2018. Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before October 12, 2018.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 12th day of October, 2018.

LAW OFFICE OF
WILLIAM E. PIERSON, JR. | PC

By 

William E. Pierson, Jr., WSBA No. 13619

Attorneys for Plaintiff
ESTATE OF VERL A. BRANTNER

PERKINS COIE LLP

By: s/ Ofunne N. Edoziem

Ofunne N. Edoziem,
CA Bar No. 260000, *admitted pro hac vice*

Perkins Coie LLP

1888 Century Park E., Suite 1700

Los Angeles, CA 90067-1721

Telephone: 310.788.9900

Facsimile: 310.788.3399

Email: OEdoziem@perkinscoie.com

By: s/ Joshua S. Schaer

Joshua S. Schaer, WSBA No. 31491

Perkins Coie LLP

10885 N.E. 4th St., Ste. 700

Bellevue, WA 98004

Telephone: 425.635.1418

Facsimile: 425.635.2418

Email: JSchaer@perkinscoie.com

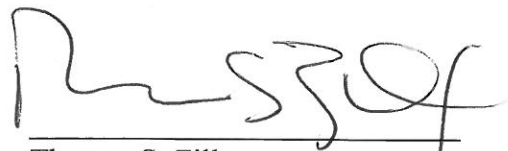
Attorneys for Defendant

Ocwen Loan Servicing, LLC

ORDER

IT IS SO ORDERED.

DATED this 19th day of October, 2018.


Thomas S. Zilly
United States District Judge